

SECOND REGULAR SESSION

[CORRECTED]

HOUSE COMMITTEE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 720

94TH GENERAL ASSEMBLY

Reported from the Special Committee on Utilities April 29, 2008 with recommendation that House Committee Substitute for Senate Committee Substitute for Senate Bill No. 720 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(21)(f).

D. ADAM CRUMBLISS, Chief Clerk

3054L.03C

AN ACT

To repeal sections 393.275, 407.300, 537.340, 660.115 and 660.135, RSMo, and to enact in lieu thereof fourteen new sections relating to utilities, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 393.275, 407.300, 537.340, 660.115 and 660.135, RSMo, are
2 repealed and fourteen new sections enacted in lieu thereof, to be known as sections 386.572,
3 393.108, 393.171, 393.275, 394.320, 407.300, 407.301, 407.302, 407.303, 537.340, 570.055,
4 570.056, 660.115 and 660.135, to read as follows:

386.572. 1. No corporation, person, public utility, or municipality that owns any
2 **gas plant shall violate any law or any order, decision, decree, rule, direction, demand, or**
3 **requirement of the commission or any part or portion thereof relating to federally**
4 **mandated natural gas safety standards. Notwithstanding the above, a municipality that**
5 **owns any gas plant shall be subject to the provisions of this section only for violations of**
6 **natural gas safety laws, rules, or orders.**

7 **2. The maximum penalties for violations of federally mandated natural gas safety**
8 **standards, or such stricter natural gas safety standards or rules as may be approved by the**
9 **commission, shall not be greater than fifteen thousand dollars for each violation with a**
10 **maximum penalty for a continuing violation or a multiple series of violations of the same**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

11 standard or rule provision not to exceed one hundred fifty thousand dollars,
12 notwithstanding any provisions of subsection 1 of section 386.570 to the contrary. The
13 maximum penalty for each violation shall increase to twenty thousand dollars, effective
14 January 1, 2015, twenty-five thousand dollars, effective January 1, 2025, thirty thousand
15 dollars, effective January 1, 2035, and forty thousand dollars, effective January 1, 2040.
16 The maximum penalty for a continuing violation or a multiple series of violations of the
17 same standard or rule provision shall increase to two hundred thousand dollars, effective
18 January 1, 2015, two hundred fifty thousand dollars, effective January 1, 2025, three
19 hundred thousand dollars, effective January 1, 2035, and four hundred thousand dollars,
20 effective January 1, 2040. In determining the amount of the penalty, the commission shall
21 consider the nature, circumstances, and gravity of the violation, and also shall consider,
22 with respect to the entity found to have committed the violation:

- 23 (1) The degree of culpability;
- 24 (2) Any history of prior violations;
- 25 (3) The effect of the penalty on the entity's ability to continue operation;
- 26 (4) Any good faith effort in attempting to achieve compliance;
- 27 (5) Ability to pay the penalty; and
- 28 (6) Such other matters as are relevant in the case.

29 3. Every violation of a specific natural gas safety standard or rule by any
30 corporation, person, public utility, or municipality that owns any gas plant is a separate
31 and distinct offense, regardless of whether such violations relate to the same incident. In
32 case of a continuing violation, each day's continuance thereof shall be a separate and
33 distinct offense.

34 4. In construing and enforcing the provisions of this section, the act, omission, or
35 failure of any officer, agent, or employee of any corporation, person, public utility, or
36 municipality that owns any gas plant acting within the scope of official duties of
37 employment shall in every case be considered the act, omission, or failure of such
38 corporation, person, public utility, or municipality that owns any gas plant.

2 393.108. For purposes of this section, the hot weather rule shall mean the period
3 of time from June first to September thirtieth, in which the discontinuance of gas and
4 electric service to all residential users, including all residential tenants of apartment
5 buildings, for nonpayment of bills where gas or electricity is used as the source of cooling
6 or to operate the only cooling equipment at the residence, is prohibited in the following
7 situations:

- 8 (1) On any day when the National Weather Service local forecast between 6:00 a.m.
and 9:00 p.m. for the following twenty-four hours predicts that the temperature shall rise

9 above ninety-five degrees Fahrenheit or that the heat index shall rise above one hundred
10 five degrees Fahrenheit;

11 (2) On any day when utility personnel are not available to reconnect utility service
12 during the immediately succeeding day or days and the National Weather Service local
13 forecast between 6:00 a.m. and 9:00 p.m. predicts that the temperature during the period
14 of unavailability shall rise above ninety-five degrees Fahrenheit or that the heat index shall
15 rise above one hundred five degrees Fahrenheit; and

16 (3) In any other applicable situations provided for in rules established and
17 amended by the public service commission.

393.171. 1. The commission shall have the authority to grant the permission and
2 approval specified in section 393.170, after the construction or acquisition of any electric
3 plant located in a first class county without a charter form of government has been
4 completed if the commission determines that the grant of such permission and approval
5 is necessary or convenient for the public service. Any such permission and approval shall,
6 for all purposes, have the same effect as the permission and approval granted prior to such
7 construction or acquisition. This subsection is enacted to clarify and specify the law in
8 existence at all times since the original enactment of section 393.170.

9 2. The provisions of this section shall expire on August 28, 2009.

393.275. 1. The commission shall notify the governing body of each city or county
2 imposing a business license tax pursuant to section 66.300, 92.045, 94.110, 94.270 or 94.360,
3 RSMo, or a similar tax adopted pursuant to charter provisions in any constitutional charter city
4 with a population of at least three hundred fifty thousand inhabitants which is located in more
5 than one county, on gross receipts of any gas corporation, electric corporation, water corporation
6 or sewer corporation of any tariff increases authorized for such firm doing business in that city
7 or county if the approved increase exceeds seven percent. The commission shall include with
8 such notice to any city or county the percentage increase approved for the utility, together with
9 an estimate of the annual increase in gross receipts resulting from the tariff increase on
10 customers residing in that city or county. The provisions of this subsection shall not apply to
11 rate adjustments in the purchase price of natural gas which are approved by the commission **and**
12 **such purchased gas adjustment rates shall include the gas cost portion of net write-offs**
13 **incurred by the gas corporation in providing service to system sales customers.**

14 2. The governing body of each city or county notified of a tariff increase as provided in
15 subsection 1 of this section shall reduce the tax rate of its business license tax on the gross
16 receipts of utility corporations. Within sixty days of the effective date of the tariff increase, the
17 tax rate shall be reduced to the extent necessary so that revenue for the ensuing twelve months
18 will be approximately equal to the revenue received during the preceding twelve months plus
19 a growth factor. The growth factor shall be equal to the average of the additional revenue

20 received in each of the preceding three years. However, a city or county may maintain the tax
21 rate of its business license tax on the gross receipts of utility corporations without reduction if
22 an ordinance to maintain the tax rate is enacted by the governing body of the city or an order to
23 maintain the tax rate is issued by the governing body of the county after September 28, 1985.
24 The provisions of this subsection shall not apply to rate adjustments in the purchase price of
25 natural gas which are approved by the commission.

**394.320. 1. Notwithstanding any other law to the contrary, any regional electric
2 cooperative engaged in providing electrical power and energy under an all-requirements
3 contract to two or more municipalities of any classification that is located in whole or in
4 part within the state of Missouri and that has the primary function of generating and
5 transmitting power from a generation cooperative to a distribution cooperative shall allow
6 the municipalities to whom it provides electrical power to appoint at least four members
7 to the governing board of such regional electric cooperative. The appointments shall be
8 made by a majority vote of the mayors of the municipalities served by the regional electric
9 cooperative. Those appointed on behalf of the municipalities to the governing board of the
10 regional electric cooperative shall be subject to section 394.140 and the cooperative's
11 bylaws respecting directors of the governing board and shall enjoy the full rights,
12 privileges, and benefits of the other members of the governing board of the regional
13 electric cooperative.**

**14 2. This section may be enforced in any court of proper jurisdiction by an injunctive
15 remedy requiring that the regional electric cooperative cease part or all of its activities
16 within Missouri if such regional electric cooperative fails to comply with any of the
17 requirements of subsection 1 of this section.**

**407.300. 1. Every purchaser or collector of, or dealer in junk, scrap metal, or any
2 secondhand property shall keep a register [which shall contain the name and address of the
3 person from whom] containing a written or electronic record for each purchase or trade in
4 which each type of metal subject to the provisions of this section is obtained for value.
5 There shall be a separate record for each transaction involving any copper or aluminum
6 or brass or bronze wire [or] , cable [is purchased], pipe, tubing, bar, ingot, rod, fitting, or
7 fastener, whatever may be the condition or length of such [copper wire or cable; the residence
8 or place of business and driver's license number of such person;] metal. The record shall
9 contain the following data: A copy of the operator's license or photo identification issued
10 by the state or by the United States government or agency thereof to the person from
11 whom the material is obtained, which shall contain a current address of the person from
12 whom the material is obtained and the date, time, and place of and a full description of each
13 such purchase or trade including the quantity by weight thereof; and shall permit any peace
14 officer to inspect the register at any reasonable time].**

15 2. The records required under this section shall be maintained for a minimum of
16 twenty-four months from when such material is obtained and shall be available for
17 inspection by any law enforcement officer.

18 3. Anyone convicted of violating this section shall be [fined not less than twenty-five
19 dollars nor more than five hundred dollars, or imprisoned for not less than thirty days nor more
20 than six months, or both] **guilty of a class A misdemeanor.**

21 4. This section shall not apply to any of the following transactions:

22 (1) Any transaction for which the total amount paid for all regulated scrap metal
23 purchased or sold does not exceed fifty dollars;

24 (2) Any transaction for which the seller has an existing business relationship with
25 the scrap metal dealer and is known to the scrap metal dealer making the purchase to be
26 an established business or political subdivision that operates a business with a fixed
27 location that can be reasonably expected to generate regulated scrap metal and can be
28 reasonably identified as such a business; or

29 (3) Any transaction for which the type of metal subject to subsection 1 of this
30 section is a minor part of a larger item, except for equipment used in the generation and
31 transmission of electrical power or telecommunications.

407.301. 1. No scrap metal dealer shall knowingly purchase or possess a metal beer
2 keg as defined in section 311.082, RSMo, whether damaged or undamaged, or any
3 reasonably recognizable part thereof, on any premises that the dealer uses to buy, sell,
4 store, shred, melt, cut, or otherwise alter scrap metal except when the purchase is from the
5 brewer or its authorized representative.

6 2. Anyone convicted of violating this section shall be guilty of a class A
7 misdemeanor punishable only by fine. Nothing in this section shall be construed to
8 preclude a person violating this section from also being prosecuted for any applicable
9 criminal offense.

407.302. 1. No scrap yard shall purchase any metal that can be identified as
2 belonging to a political subdivision or electrical cooperative, municipal utility, or a utility
3 regulated under chapter 386 or 393, RSMo, including bleachers, guardrails, signs, street
4 and traffic lights or signals, and manhole cover or covers, whether broken or unbroken,
5 from anyone other than the political subdivision, electrical cooperative or utility, or
6 manufacturer of the metal or item described in this section unless such person is
7 authorized in writing by the political subdivision, electrical cooperative or utility, or
8 manufacturer to sell the metal.

9 2. Anyone convicted of violating this section shall be guilty of a class B
10 misdemeanor.

407.303. 1. Any scrap metal dealer paying out an amount that is five hundred dollars or more shall make such payment in the form of a check or shall pay by any method in which a financial institution makes and retains a record of the transaction.

2. This section shall not apply to any transaction for which the seller has an existing business relationship with the scrap metal dealer and is known to the scrap metal dealer making the purchase to be an established business or political subdivision that operates a business with a fixed location that can be reasonably expected to generate regulated scrap metal and can be reasonably identified as such a business.

537.340. 1. If any person shall cut down, injure or destroy or carry away any tree placed or growing for use, shade or ornament, or any timber, rails or wood standing, being or growing on the land of any other person, including any governmental entity, or shall dig up, quarry or carry away any stones, ore or mineral, gravel, clay or mold, or any ice or other substance or material being a part of the realty, or any roots, fruits or plants, or cut down or carry away grass, grain, corn, flax or hemp in which such person has no interest or right, standing, lying or being on land not such person's own, or shall knowingly break the glass or any part of it in any building not such person's own, the person so offending shall pay to the party injured treble the value of the things so injured, broken, destroyed or carried away, with costs. Any person filing a claim for damages pursuant to this section need not prove negligence or intent.

2. Notwithstanding the provisions of subsection 1 of this section, the following rules shall apply to the trimming, removing, and controlling of trees and other vegetation by any electric supplier:

(1) Every electric supplier that operates electric transmission or distribution lines shall have the authority to maintain the same by trimming, removing, and controlling trees and other vegetation posing a hazard to the continued safe and reliable operation thereof;

(2) An electric supplier may exercise its authority under subdivision (1) of this subsection if the trees and other vegetation are within the legal description of any recorded easement, or in the absence of a recorded easement, the following:

(a) Within ten feet, plus one-half the length of any attached cross arm, of either side of the centerline of electricity lines potentially energized at or below 34.5 kilovolts measured line to line and located within the limits of any city; or

(b) Within thirty feet of either side of the centerline of electricity lines potentially energized at or below 34.5 kilovolts measured line to line and located outside the limits of any city; or

(c) Within fifty feet of either side of the centerline of electricity lines potentially energized between 34.5 and one hundred kilovolts measured line to line; or

(d) Within the greater of the following for any electricity lines potentially energized at one hundred kilovolts or more measured line to line:

30 a. Seventy-five feet to either side of the centerline; or

31 b. Any required clearance distance adopted by either the Federal Energy
32 Regulatory Commission or an Electric Reliability Organization authorized by the Energy
33 Policy Act of 2005, 16 U.S.C. Section 824o. Such exercise shall be considered reasonable
34 and necessary for the proper and reliable operation of electric service and shall create a
35 rebuttable presumption, in claims for property damage, that the electric supplier acted
36 with reasonable care, operated within its rights regarding the operation and maintenance
37 of its electricity lines, and has not committed a trespass;

38 (3) An electric supplier may trim, remove, and control trees and other vegetation
39 outside the provisions in subdivision (2) of this subsection if such actions are necessary to
40 maintain the continued safe and reliable operation of its electric lines;

41 (4) An electric supplier may secure from the owner or occupier of land greater
42 authority to trim, remove, and control trees and other vegetation than the provisions set
43 forth in subdivision (2) of this subsection and may exercise any and all rights regarding the
44 trimming, removing, and controlling of trees and other vegetation granted in any easement
45 held by the electric supplier;

46 (5) An electric supplier may trim or remove any tree of sufficient height outside the
47 provisions of subdivision (2) of this subsection when such tree, if it were to fall, would
48 threaten the integrity and safety of any electric transmission or distribution line and would
49 pose a hazard to the continued safe and reliable operation thereof;

50 (6) Prior to the removal of any tree under the provisions of subdivision (5) of this
51 subsection, an electric supplier shall notify the owner or occupier of land, if available, at
52 least fourteen days prior to such removal, unless either the electric supplier deems the
53 removal to be immediately necessary to continue the safe and reliable operation of its
54 electricity lines, or the electric supplier is trimming or removing trees and other vegetation
55 following a major weather event or other emergency situation;

56 (7) If any tree which is partially trimmed by an electric supplier dies within three
57 months as a result of such trimming, the owner or occupier of land upon which the tree
58 was trimmed may request in writing that the electric supplier remove such tree at the
59 electric supplier's expense. The electric supplier shall respond to such request within
60 ninety days;

61 (8) Nothing in this subsection shall be interpreted as requiring any electric supplier
62 to fully exercise the authorities granted in this subsection.

63 3. For purposes of this section, the term "electric supplier" means any rural
64 cooperative that is subject to the provisions of chapter 394, RSMo, and any electric
65 corporation which is required by its bylaws to operate on the not-for-profit cooperative
66 business plan, with its consumers who receive service as the stockholders of such

67 corporation and that holds a certificate of public convenience and necessity to serve a
68 majority of its customer-owners in counties of the third classification as of August 28, 2003.

570.055. Any person who steals or appropriates, without consent of the owner, any
2 wire, electrical transformer, metallic wire associated with transmitting
3 telecommunications, or any other device or pipe that is associated with conducting
4 electricity or transporting natural gas or other combustible fuels shall be guilty of a class
5 C felony.

570.056. Any person who steals or appropriates, without consent of the owner, any
2 property located on the premises of electrical cooperatives or municipal utilities or utilities
3 regulated under chapter 386, RSMo, shall be guilty of a class D felony.

660.115. 1. For each eligible household, an amount not exceeding [six] **eight** hundred
2 dollars for each fiscal year may be paid from the utilicare stabilization fund to the primary or
3 secondary heating source supplier, or both, including suppliers of heating fuels, such as gas,
4 electricity, wood, coal, propane and heating oil. For each eligible household, an amount not
5 exceeding [six] **eight** hundred dollars for each fiscal year may be paid from the utilicare
6 stabilization fund to the primary or secondary cooling source supplier, or both; provided that the
7 respective shares of overall funding previously received by primary and secondary heating and
8 cooling source suppliers on behalf of their customers shall be substantially maintained.
9 2. For an eligible household, other than a household located in publicly owned or
10 subsidized housing, an adult boarding facility, an intermediate care facility, a residential care
11 facility or a skilled nursing facility, whose members rent their dwelling and do not pay a supplier
12 directly for the household's primary or secondary heating or cooling source, utilicare payments
13 shall be paid directly to the head of the household, except that total payments shall not exceed
14 eight percent of the household's annual rent or one hundred dollars, whichever is less.

660.135. 1. Not more than [five] **ten** million dollars from state general revenue shall be
2 appropriated by the general assembly to the utilicare stabilization fund established pursuant to
3 section 660.136 for the support of the utilicare program established by sections 660.100 to
4 660.136 for any fiscal year, except in succeeding years the amount of state funds may be
5 increased by a percentage which reflects the national cost-of-living index or seven percent,
6 whichever is lower.

7 2. The department of social services [may] **shall**, in coordination with the department
8 of natural resources, apply a portion of the funds appropriated annually by the general assembly
9 to the utilicare stabilization fund established pursuant to section 660.136 to the low income
10 weatherization assistance program of the department of natural resources; provided that any
11 project financed with such funds shall be consistent with federal guidelines for the
12 Weatherization Assistance Program for Low-Income Persons as authorized by 42 U.S.C. 6861.